IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

JUDGMENT
IN

S.B. Criminal Appeal No.523/2001

(1) Vikram Singh, (2) Rampat, (3) Kailash and
(4) Smt. Bimla W/o Rampat
...accused-appellants

Versus

The State of Rajasthan
through Public Prosecutor
...Respondent

Date of Judgment :::: March 20, 2006

PRESENT
Hon'ble Mr. Justice Narendra Kumar Jain

Shri Anurag Sharma with
Shri Ashish Sharma and
Shri Mukesh Pal and
Shri Arvind Sharma for accused-appellants
Shri Virendra Singh Yadav for complainant
Shri B.S. Chhaba, Public Prosecutor, for the State

By the Court:-

This criminal appeal under Section 374 (2) of the Code of Criminal Procedure (for short, 'Cr.P.C.'), is directed against the judgment and order dated 9.8.2001 of the Additional Sessions Judge, Behror, District Alwar, in Sessions Case No.21/2000, whereby the accused-appellants have been convicted and sentenced as under:-

Name of Accused	*Under Section*	*Sentence*
Vikram Singh, Rampat and Smt. Bimla	304 B, IPC	To ten years rigorous imprisonment
Vikram Singh, Rampat and Smt. Bimla	201 IPC	To two years rigorous imprisonment and fine of Rs.2000/-; in default of payment of fine, to further undergo additional two months' simple imprisonment
Vikram Singh, Rampat and Smt. Bimla	498 A, IPC	To three years rigorous imprisonment and fine of Rs.3000/-; in default of payment of fine, to further undergo additional three months' simple imprisonment
Kailash	498 A, IPC	To three years rigorous imprisonment and fine of Rs.3000/-; in default of payment of fine, to further undergo additional three months' simple imprisonment

Briefly stated the relevant facts for disposal of this appeal are that PW-1 Sajjan Singh, the father of deceased Sushila, lodged a written report (Exhibit P-1) dated 31.1.2000 at Police Station Behror about the death of his daughter Sushila by her in-laws. It was alleged that his two daughters, namely, Sushila and Kavita were married on 19.11.1999 with Vikram and Arvind, both sons of Rampat, By Caste Ahir, Resident of Mundiakhera, Tehsil Behror. He gave sufficient dowry in the marriage as per his capacity. He had given one Hero Honda Motorcycle, one coloured television, one Flour

Machine with motor, two bed and also cash of Rs.1,31,000/-. Her father-in-law, mother-in-law, their daughter and the husband started his daughter harassing by saying that two daughters have been married, therefore, two motorcycles and two coloured televisions should have been given in the marriage whereas her father has given only one motorcycle and one coloured television. It was further alleged that Rampat, Kailash, Vikram, Arvind, Ajit, Bimla and Maya, all by caste Ahir, residents of Mundiakhera, have killed his daughter by strangulation and threw her dead-body outside the house. On receipt of said information, he went to Mundiakhera with his brother and other relatives and enquired from the local residents of the village, who told that his daughter Sushila has been killed by her in-laws because of less dowry in her marriage and, therefore, he prayed in the report that a legal action may be taken in the matter.

On the basis of this information, the police registered FIR No.46/2000 (Exhibit P-2) under Sections 498A and 304B IPC, and started investigation. Site-plan (Exhibit P-3) was prepared and postmortem of dead-body of Sushila was conducted and as per postmortem report (Exhibit P-40) the medical board opined that the mode

of death is asphyxia due to strangulation with fracture dislocation of third cervical vertebra. All the injuries were found to be ante-mortem in nature. After completion of investigation, the police filed charge-sheet against the accused persons under Sections 498A, 304B and 201 IPC in the Court of Additional Chief Judicial Magistrate, who committed the case for trial.

The trial court framed charges against the accused Vikram Singh, the husband, under Section 302, in alternative under Section 304B, Sections 201 and 498A, IPC and against accused persons Smt. Bimla, Kailash and Rampat for the office under Sections 304B, 201 and 498A, IPC. The accused persons denied the charges and claimed to be tried. The prosecution examined 32 witnesses and produced documentary evidence Exhibit P-1 to Exhibit P-43. Thereafter statements of accused persons were recorded under Section 313 of the Cr.P.C. No witness was examined in defence but documentary evidence Exhibit D-1 to Exhibit D-16 was produced. The learned trial court, after hearing arguments from all the sides, convicted and sentenced the accused appellants as mentioned above.

The learned counsel for the accused appellants contended that the learned trial court has wrongly

convicted the accused persons for the above offence. He contended that the prosecution itself was not sure as to whether the death of Sushila was homicide or suicide. The learned trial court framed charge against the accused Vikram under Section 302 and in alternative under Section 304B of the IPC. He referred the statements of PW-19 Gajanand Sharma and PW-32 P.C. Nyola, in this regard. PW-19 Gajanand, Investigating Officer, in his cross-examination, admitted that during his investigation it came on the record that on 28.1.2000 the deceased came with accused husband Vikram Singh, happily. PW-32 P.C. Nyola, Additional Superintendent of Police, in his cross-examination, admitted that as per his investigation of the case, the offence under Section 498A and 304B of the IPC was not made out. However, he stated that as per his investigation he opined that the offence under Section 302 and 201 IPC is made out against accused persons.

It was further contended that the prosecution witnesses have stated before the court about demand of Rs.30,000/- whereas the said fact is missing in the first information report as well as in the statements of prosecution witnesses, recorded under Section 161, Cr.P.C., which have been placed on the record as

Exhibit D-1 to Exhibit D-12. He further contended that PW-1 Sajjan Singh is the star witness of the prosecution in the case but his statement is not corroborated by statements of other prosecution witnesses particularly on the point of demand of Rs.30,000/-. He read out the statement of the prosecution witnesses and emphasized on the statement of PW-9 Deep Chand, who stated that the amount of Rs.30,000/- was demanded but it was for some other need of her in-laws and as such the same cannot be treated as demand for dowry so as to attract the provisions of Section 304B, IPC. He further contended that looking to the conduct of the prosecution witnesses, their testimony cannot be believed and made basis for conviction. PW-1 Sajjan Singh has admitted that he received information about the death of Sushila through Ram Kumar but still he did not go to Village Mundiakhera immediately but told him that he would go in morning. Whereas PW-10 Nihali Devi stated that her husband was being taken to Mundiakhera forcibly. The learned counsel pointed out contradictions in the statements of the prosecution witnesses.

The learned counsel for the complainant as well as the learned Public Prosecutor, appearing on behalf

of the State, contended that the learned trial court has appreciated oral and documentary evidence available on the record and rightly convicted and sentenced the accused persons. They contended that there is no perversity or illegality in the finding of the trial court so as to interfere in it.

Shri Virendra Singh Yadav, the learned counsel for the complainant, further contended that as per the site-plan (Exhibit P-3) it is clear that there are signs of dragging the deceased Sushila from the places marked (X) to (XI). The deceased sustained ten injuries and from the postmortem report it is clear that it was a case of homicide death. He referred the statements of prosecution witnesses and contended that from the prosecution evidence it is clear that there was harassment of the girl mentally and physically. There was demand for dowry by all the accused persons. He also pointed out the conduct of the accused persons that Sushila, while alive or after her death, was dragged and her dead-body was thrown in 'banjar'. He also contended that initially all the accused persons furnished explanation that deceased Sushila was murdered by dacoits whereas her ornaments were found intact and therefrom it is clear that the accused

persons tried to give false explanation, which connect them with the crime also. He also contended that the FIR is not the last version and even if there is no version of demand of Rs.30,000/- in it, the same is not fatal to the prosecution case.

The learned Public Prosecutor contended that the demand for dowry is proved in the present case by accused persons and even if demand is direct or indirect, a presumption can be drawn for the offence against the accused persons, therefore, his contention is that appeal of the appellants be dismissed.

I have considered the submissions of the learned counsel for the parties and minutely scanned the record and the impugned judgment of the trial court.

For the ready reference, Section 304B of the IPC and Section 113B of the Evidence Act are reproduced as under:-

> “304B. Dowry death.-(1) Where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her

husband or any relative of her husband for, or in connection with, any demand for dowry, such death shall be called “dowry death”, and such husband or relative shall be deemed to have caused her death.

Explanation.- For the purposes of this sub-section, “dowry” shall have the same meaning as in section 2 of the Dowry Prohibition Act, 1961 (28 of 1961).

(2) Whoever commits dowry death shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life.”

“113B. Presumption as to dowry death.-When the question is whether a person has committed the dowry death of a woman and it is shown that soon before her death such woman had been subjected by such person to cruelty or harassment for, or in connection with, any demand for dowry, the Court shall

> presume that such person had caused the dowry death.
>
> Explanation.-For the purposes of this Section, “dowry death” shall have the same meaning as in Section 304B of the Indian Penal Code (45 of 1860).

In Sunil Bajaj v. State of M.P., (2001) 9 SCC 417, it is held that in order to convict an accused for an offence under Section 304-B IPC, the following essentials must be satisfied:-

> (1) the death of a woman must have been caused by burns or bodily injury or otherwise than under normal circumstances;
> (2) such death must have occurred within 7 years of her marriage;
> (3) soon before her death, the woman must have been subjected to cruelty or harassment by her husband or by relatives of her husband;
> (4) such cruelty or harassment must be for or in connection with demand of dowry.

In Satvir Singh Vs. State of Punjab, (2001) 8 SCC 633, the Hon'ble Supreme Court considered the

meaning of words “soon before her death” and the word “dowry” used in Section 304B, IPC, and held as under:-

> “20. Prosecution, in a case of offence under Section 304-B IPC cannot escape from the burden of proof that the harassment or cruelty was related to the demand for dowry and also that such cruelty or harassment was caused “soon before her death”. The word “dowry” in Section 304-B has to be understood as it is defined in Section 2 of the Dowry Prohibition Act, 1961. The definition reads thus:
>
> > “2. In this Act, 'dowry' means any property or valuable security given or agreed to be given either directly or indirectly-
> >
> > (a) by one party to a marriage to the other party to the marriage; or
> >
> > (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person;
> >
> > at or before or any time after the marriage in connection with marriage of the said parties, but does not include dower or mahr in the case of persons to whom the Muslim personal law (Shariat) applies.”
>
> 21. Thus, there are three occasions related to dowry. One is before the marriage, second is at the time of marriage and the third is “at any time”

> after the marriage. The third occasion may appear to be an unending period. But the crucial words are “in connection with the marriage of the said parties”. This means that giving or agreeing to give any property or valuable security on any of the above three stages should have been in connection with the marriage of the parties. There can be many other instances for payment of money or giving property as between the spouses. For example, some customary payments in connection with birth of a child or other ceremonies are prevalent in different societies. Such payments are not enveloped within the ambit of “dowry”. Hence the dowry mentioned in Section 304-B should be any property or valuable security given or agreed to be given in connection with the marriage.”

In Angoori Vs. State of Rajasthan, (2005) 10 SCC 210, the Hon'ble Apex Court, on the facts of that particular case, held that story of demand for dowry by appellants was developed ex-post facto by parents of deceased and in absence of demand for dowry, harassment if any meted out to deceased, will not come within the ambit of Section 304-B, IPC.

In Baljeet Singh v. State of Haryana, (2004) 3 SCC 122, it was observed:-

> “On a conjoint reading of Section 304-B IPC and Section 113-B of the Evidence Act it is clear that for drawing a presumption under Section 113-B firstly, there should be death of a woman otherwise than in normal circumstances, within seven years of marriage and the prosecution having shown that soon before her death she was subjected to cruelty or harassment in connection with any demand for dowry by persons accused of having committed the offence. Unless and until these preliminary facts are established by the prosecution, it is not open to the courts to draw a presumption against the accused invoking Section 113-B.”

In State of M.P. v. Dhirendra Kumar, AIR 1997 SC 318, the Hon'ble Supreme Court observed that FIRs are not taken as encyclopedia and omission of a fact therein, even if material, cannot itself make the witness deposing about that fact unbelievable at that point.

In Pawan Kumar & Others v. State of Haryana, 1998 Cr.L.R. (SC) 216, the Hon'ble Apex Court considered the provisions of Section 8-A of the Dowry Prohibition Act, 1961 in the context of Section 113-B

of the Evidence Act and observed as under:-

> “...We find that Sec.8-A of the aforesaid 1961 Act which came into force w.e.f. 2.10.1985 for taking or abetting any dowry, the burden to explain is placed on such person against whom the allegation of committing an offence is made. Similarly, under Explanation to Sec. 113-B of the Indian Evidence Act, which was also brought in by the aforesaid Act No.43 of 1986, there is presumption that such death is on account of dowry death. Thus the burden, if at all, was on the accused to prove otherwise.”

In State of Rajasthan Vs. Heera Lal & Another, RLR 2000 (2) 515, the Division Bench of this Court observed that even if some lapse has been committed by Investigating Officer in the investigation, the accused cannot get advantage of the lapse committed by Investigating Officer and accused cannot claim acquittal on that basis. It was further observed that if the Investigating Officer has omitted to do certain things and investigation was not satisfactory, then merely on the basis of lapses of Investigating Officer, the accused cannot claim acquittal.

In State of Andhra Pradesh Vs. Raj Gopal Asawa,

(2004) 4 SCC 470, their Lordships of the Hon'ble Supreme Court observed that proof of demand of dowry can be based on circumstantial evidence and inference can be drawn from evidence, that could be direct or indirect. The expression “soon before” in Section 304-B, IPC, was also considered and it was held as under:-

> “A conjoint reading of Section 113-B of the Evidence Act and Section 304-B IPC shows that there must be material to show that soon before her death the victim was subjected to cruelty or harassment. The prosecution has to rule out the possibility of a natural or accidental death so as to bring it within the purview of “death occurring otherwise than in normal circumstances”. The expression “soon before” is very relevant where Section 113-B of the Evidence Act and Section 304-B IPC are pressed into service. The prosecution is obliged to show that soon before the occurrence there was cruelty or harassment and only in that case the aforesaid presumption operates. Evidence in that regard has to be led by the prosecution. “Soon before” is a relative term and it would depend upon the circumstances

of each case and no straitjacket formula can be laid down as to what would constitute a period of soon before the occurrence. It would be hazardous to indicate any fixed period, and that brings in the importance of a proximity test both for the proof of an offence of dowry death as well as for raising a presumption under Section 113-B of the Evidence Act. The expression “soon before her death” used in the substantive Section 304-B IPC and Section 113-B of the Evidence Act is present with the idea of proximity test. No definite period has been indicated and the expression “soon before” is not defined. A reference to the expression “soon before” used in Section 114 Illustration (a) of the Evidence Act is relevant. It lays down that a court may presume that a man who is in the possession of goods “soon after the theft is either the thief or has received the goods knowing them to be stolen, unless he can account for his possession”. The determination of the period which can come within the term “soon before” is left to be determined by the courts, depending upon the facts and circumstances of

> each case. Suffice, however, to indicate that the expression “soon before” would normally imply that the interval should not be much between the cruelty or harassment concerned and the death in question. There must be existence of a proximate and live link between the effect of cruelty based on dowry demand and the death concerned. If alleged incident of cruelty is remote in time and has become stale enough not to disturb mental equilibrium of the woman concerned, it would be of no consequence.”

In Prem Singh Vs. State of Haryana, 1999 Cr.L.R. (SC) 55, the Hon'ble Supreme Court, in the facts and circumstances of that case, where deceased died of asphyxia and no explanation was offered by the husband as to how his wife sustained several abrasions and contusions on her body, drew a presumption of dowry death, as a bride met an unnatural death within seven years of her marriage and she received ill-treatment and harassment by her in-laws for not bringing sufficient dowry.

In Santosh Rani Jain & Another Vs. State of West Bengal, 1999 Cr.L.R. (SC) 65, the Hon'ble Supreme Court considered that there was unnatural death within four

months of marriage. The demand of dowry, harassment and torture were proved. As per medical evidence the death was homicidal and not suicidal, and uphold the conviction of the accused for the dowry death.

In view of the above legal position, I consider the evidence of the present case.

The marriage of deceased Sushila with accused Vikram took place on 19.11.1999 and she died within two-and-half month i.e. on 30.1.2000, therefore, it is clear that she died within a period of seven years of her marriage. Exhibit P-40, the postmortem report, shows that there were ten injuries on the person of deceased Sushila. The opinion of the medical board in the postmortem report was as under:-

> "After careful examination of dead body by members of board facts revealed that mode of death is asphyxia due to strangulation with fracture dislocation of third cervical vertebra. All the injuries are ante-mortem in nature."

The above fact shows that death of deceased Sushila was not a natural but it was homicidal death in her in-laws house.

The prosecution has examined PW-1 Sajjan Singh, the father, PW-2 Lal Chand, the uncle, PW-5 Kamlesh,

the aunt, PW-9 Deep Chand, the uncle, PW-10 Nihali Devi, the mother, PW-20 Kavita, the sister, PW-21 Praveen Kumar, the brother of the deceased, and all have stated that Sushila was married with Vikram on 19.11.1999 and she died at her in-law's house on 30.1.2000. Deceased Sushila and Kavita, both daughters of PW-1 Sajjan Singh, were married with accused Vikram and Arvind, both sons of accused Rampat. The parents of deceased Sushila gave sufficient dowry in the marriage i.e. Rs.1,31,000/-, in cash, and Hero Honda Motorcycle, coloured television, flour machine with motor, two almirah, two double-bed, two cooler, utensils and ornaments. Sushila came back on 20.11.1999 and went to her in-law's house on 20.11.1999 itself. PW-21 Praveen Kumar went to bring Sushila on 25th November, 1999 and she came on 26th of November, 1999. PW-1 Sajjan Singh has stated that his daughter Sushila told him that her in-laws were telling her that two sisters were married with two brothers whereas only one motorcycle, one coloured television, one flour machine with motor has been given. On 6th January, 2000 his son-in-law Vikram came to take Sushila and on 7th January, 2000 Sushila went with him and on her reaching there, her in-law's started to abuse and harass her and demanded freeze

etc.. On 24th January, 2000 his son again went to village Mundiakhera to bring Sushila and she came on 25th January, 2000 and at this time she told that she is being harassed by her mother-in-law, father-in-law, husband Vikram and uncle-in-law Kailash. They all were telling that the boy is in service but only one television, one freeze and one motorcycle has been given. She stated that her in-laws have told her to bring Rs.30,000/- cash. On 27.1.2000 Vikram Singh came to bring Sushila. Sushila went on 28.1.2000 with Vikram, to her in-law's house, and thereafter she died on 30.1.2000. It was further stated that amount of Rs.10,000/- was given to Sushila on 28.1.2000 when she went at her in-laws house and assured her that he will definitely arrange for remaining amount of Rs.20,000/- and will send the same. After hearing about the death of Sushila he went to village Mundiakhera and enquired about her death. On this the villagers told him that her in-laws have killed her. PW-1 Sajjan Singh further stated that Rampat, the father-in-law of deceased Sushila, told him that all of them have killed Sushila but now he should forgive him.

PW-5 Kamlesh has also stated about demand of dowry by accused persons. She has stated that when

Sushila came from her in-laws then she told her that Vikram gave beating to her and she also told about the demand of accused persons of the amount of Rs.30,000/-. The amount of Rs.10,000/- was given to Sushila.

PW-9 Deep Chand has also stated that 'gauna' ceremony of Sushila was performed and she was sent to her in-laws. He has further stated that they wanted to perform 'gauna' ceremony of Kavita also but accused Kailash told them that they should perform 'gauna' ceremony of Kavita only when they arrange for second motorcycle, colour television, flour machine with motor etc. He stated that due to less dowry the 'gauna' ceremony of another daughter Kavita could not be performed and accused persons did not take Kavita to her in-law's house. He has also stated about the demand of Rs.30,000/- as dowry by accused persons.

PW-10 Nihali Devi has reiterated the version relating to demand of dowry by accused persons.

PW-20 Kavita, whose marriage was also solemnized with the marriage of deceased on 19.11.1999, has also stated about giving of dowry in the marriage as stated by other prosecution witnesses and about harassment of Sushila by the members of her in-law's family. She has stated that on arrival of Sushila at her maternal house

and meeting their mother, she was weeping complaining about the harassment of her in-laws for not giving sufficient dowry.

PW-21 Praveen Kumar has also reiterated about the demand of dowry by accused persons.

Therefore, from the above referred statements of the prosecution witnesses, it is proved beyond doubt that deceased Sushila was subjected to cruelty or harassment by her husband, mother-in-law, father-in-law and uncle-in-law, the accused persons herein and that was for and in connection with demand of dowry itself. In these circumstances all the necessary ingredients of Section 304B as well as 498A IPC are fully proved in the present case. This is one of the glaring case where a young girl of 20 years of age was killed by her in-law's family members i.e. accused persons herein, within two-and-half month of her marriage. She died at her in-law's house and her death was not a natural death which is clear from the postmortem report (Exhibit P-40) as well as the statement of PW-17 Dr. Mahesh Agarwal. All the prosecution witnesses have named all four accused persons. The accused Kailash was living separately, therefore, he was acquitted of the offence under Section 304B IPC by the trial court and

he has been convicted only for the offence under Section 498A IPC.

After considering all the evidence, oral and documentary, on the record I find that there is sufficient evidence available on the record to connect the accused persons with the crime and they have rightly been convicted for the offence mentioned above.

I have also examined the findings of the learned trial court and the reasons assigned by him for convicting the accused persons in the light of the evidence available on the record as well as submissions of the learned counsel for the accused-appellants and I do not find any illegality or perversity therein so as to take a different view from it. The accused persons have not come with satisfactory explanation as to how Sushila died within two-and-half month of her marriage at their place.

In view of the above discussion I do not find any force in any of the contentions of the learned counsel for the accused-appellants and I do not see any illegality or perversity in the finding of the learned trial court.

So far as sentence of imprisonment of ten years awarded by the trial court is concerned I am of the

view that looking to the evidence on record, the trial court rightly awarded ten years rigorous imprisonment to accused Vikram Singh, husband of the deceased, but so far as other accused persons are concerned I am of the view that the learned trial court awarded disproportionate sentence to accused-appellants Rampat, Smt. Bimla Devi and Kailash. In the facts and circumstances of the present case I find that ends of justice will be met if the sentence of imprisonment of ten years awarded to accused-appellants Rampat and Smt. Bimla Devi is reduced to a minimum period of sentence of seven years rigorous imprisonment under Section 304B IPC and the imprisonment of Kailash under Section 498A IPC from three years rigorous imprisonment to one year rigorous imprisonment. Rest of the sentence of imprisonment under other offence are upheld.

Consequently the appeal of accused-appellant Vikram is dismissed. But, the appeals of accused-appellants Rampat, Smt. Bimla Devi and Kailash are partly allowed. The sentence of accused-appellants Rampat and Smt. Bimla under Section 304B IPC is reduced from ten years to seven years rigorous imprisonment and the sentence of accused-appellant Kailash under Section 498A IPC from three years rigorous imprisonment to one

year rigorous imprisonment. The sentence of imprisonment of accused-appellants Rampat and Smt. Bimla Devi under Sections 498-A and 201 of the IPC is maintained.

Accused-appellants Rampat, Smt. Bimla Devi and Kailash are on bail, therefore, they are directed to surrender themselves before the trial court immediately to serve out the remaining sentence of imprisonment. In case they do not surrender before the trial court, necessary steps be taken by the trial court for execution of their remaining sentence of imprisonment and fine.

(Narendra Kumar Jain) J.

//Jaiman//